

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

Kelly K. Simon, OSB No. 154213
ksimon@aclu-or.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OREGON
P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

INDEX NEWSPAPERS LLC, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

CITY OF PORTLAND, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

DECLARATION OF STEVE HICKEY IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE

I, Steve Hickey, declare:

1. I am a Washington resident who lives in Seattle. I am a freelance photographer whose work has been published nationally by NBC, including my coverage of protests in Seattle. I arrived in Portland on Saturday night with the intent to film footage that would be licensed to NBC documenting the protests and the federal response on Saturday and Sunday nights. If called as a witness, I could, and would, testify competently to the facts below.

2. I have significant experience documenting riots and violent situations involving the police, including coverage of these ongoing protests in Seattle. What I have seen and documented these nights in Portland is markedly different than even the most explosive protests I have covered in Seattle. The federal agents here repeatedly charge far off federal property and beat up anyone who cannot run away in time. But I have not seen federal agents arrest those people. Instead, they seem to be allowing them to return to the increasingly restless crowds to spread brutal stories of how they were attacked by federal agents. I wonder if this is intentional.

3. On the night of July 19, I was capturing the protests in downtown Portland in front of the Hatfield Courthouse. I did not protest, demonstrate, or get very close to the police line. I was using a large Sony a7R IV. I was also wearing shorts, a tucked-in shirt, and gas mask.

4. At approximately 1 or 1:30 in the morning on July 20, I was standing near the former site of the Elk Fountain by SW 3rd Ave. and SW Main St., trying to capture photos of the federal agents and protestors converging in the street in front of the Courthouse. I was around 100 feet away from any federal agents.

5. Suddenly, I noticed a federal agent looking at me, so I looked up at him. We locked eye contact even through our masks. I thought: Why is he looking at me?

6. The federal agent raised his gun, aiming it directly at me.

7. As soon as I realized what was happening, I turned away and raised my hand to cover my face. An unidentified impact munition struck me in the back of my arm that was covering my face. I am 6'3", so it must have been intentional to aim at my head.

8. This is a true and correct copy of a photograph I took of my elbow after being shot by the federal agents:



9. Being shot stung incredibly bad but I felt fortunate to have shielded my face from the blow.

10. When I was shot, I was not in the crowd of protestors. I may have been near some fellow photographers. I did not defy any orders to move away. I had already moved far away.

11. A bit later, I was documenting the scene near the corner of SW 3rd Ave. and SW Salmon. Again, I was at least 100 feet away from any federal agents, who appeared to be retreating. I was not doing anything threatening. I was crouching behind a car because federal agents had just shot at my face.

12. Right as I happened to look up, suddenly, without any warning or provocation, I felt a huge impact on my face and heard a chunk of something ricochet nearby.

13. A federal agent had again shot at my face, this time connecting with my gas mask. It shattered the mask's plastic filter cover.

14. This is a true and correct copy of a photograph I took of the rubber bullet and my damaged mask:




15. There was *nobody* else around me when the federal agents shot at my face the second time. The federal agents appeared to be retreating at the time.

16. I do not intend to continue covering the protests in Portland after tonight, in part because I am fearful that federal agents will injure me even more severely than they did on the night of July 19 and morning of July 20 when they intentionally shot at my face, twice, when I was not even near any protestors.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

DocuSigned by:

8A54CDE3D17648C...

Steve Hickey